

1 BILL NO. S-82-12-26

2 SPECIAL ORDINANCE NO. S-05-83

3 AN ORDINANCE approving Street Improvement
4 Resolution No. 5951-82, 1982 Asphalt Resurfacing,
5 First Councilmanic District, with Dailey
Asphalt Products Co., Inc., in connection
with the Board of Public Works.

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7 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
8 FORT WAYNE, INDIANA:

9 SECTION 1. That a certain Contract dated October 27,
10 1982, between the City of Fort Wayne, Indiana, by and through its
11 Mayor and the Board of Public Works and Dailey Asphalt Products
12 Co., Inc., for:

13 the resurfacing and restoration of pavement
14 on the following streets: Wabash Avenue;
15 Holly Avenue; Felician Street; Raymond
16 Avenue; New Haven Avenue; Tecumseh Street;
17 Delta Boulevard; Creighton Avenue; Forest
Valley Drive; Grandeur Drive; Monarch Drive;
Countess Drive; Warren Street; Pennsylvania
Street; McDonald Street; Pittsburg Street;
and Winch Street;

18 under Board of Public Works Street Improvement Resolution No.
19 5951-82, involving a total cost of Five Hundred Fifty-One
20 Thousand Six Hundred Fifty-Seven and 95/100 Dollars
21 (\$551,657.95), all as more particularly set forth in said
22 Resolution and Contract, and which is on file with the Office of
23 the Board of Public Works and is by reference incorporated
24 herein, made a part hereof and is hereby in all things ratified,
25 confirmed and approved. Two copies of said Contract are on file
26 with the Office of the City Clerk and made available for public
27 inspection, according to law.

28 SECTION 2. That this Ordinance shall be in full force
29 and effect from and after its passage and any and all necessary
30 approval by the Mayor.

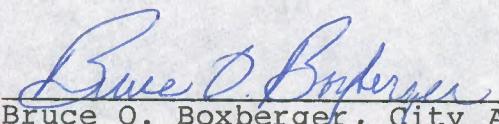
31 
32 Councilmember

1 Page Two

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3 APPROVED AS TO FORM
AND LEGALITY

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6 Bruce O. Boxberger, City Attorney

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Read the first time in full and on motion by Star,
seconded by Gia Quinta, and duly adopted, read the second time
by title and referred to the Committee Public Works (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of _____
, 19_____, at _____ o'clock _____ M., E.S.T.

DATE: 12-28-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Talarico,
seconded by Gia Quinta, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>BRADBURY</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>BURNS</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>EISBART</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>GiaQUINTA</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>SCHMIDT</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>SCHOMBURG</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>SCRUGGS</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>STIER</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>TALARICO</u>	<u>✓</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

DATE: 1-11-83

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-05-83
on the 11th day of January, 1983.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Bay-Lake Park
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 19th day of January, 1983, at the hour of
11:30 o'clock A. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 14th day of January
1983, at the hour of 3 o'clock P. M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

CONTRACT

72-126-34
10/27/82

This Agreement, made and entered into this 27 day of October, 1982

by and between DAILEY ASPHALT PRODUCTS COMPANY, INC.
1122 THOMAS ROAD, FORT WAYNE, INDIANA

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, herein-after called "City," under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to improve Improvement Resolution No. 5951-82 the 1st Councilmanic District - 1982 Asphalt Resurfacing (Bond Issue).

See attached Improvement Resolution for list of streets and limits involved.

by grading and paving the roadway to a width of XXXXXXXXXXXXXXXXXXXX feet with XXXXXXXXXXXXXXXXXXXX upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improvement Resolution No. 5951-82 attached hereto and by reference made a part hereof. XXXXXXXXXXXXXXXXXXXX

At the following prices:

Pavement Removal	One dollar and twenty-five cents per square yard	1.25
H.A.C. #9 Binder	Twenty-two dollars and no cents per ton	22.00
H.A.C. #11 Binder	Twenty-three dollars and no cents per ton	23.00
H.A.C. A-2 Surface	Twenty-five dollars and sixty-five cents per ton	25.65
Joint & Crack Sealer	Six hundred dollars and no cents per ton	600.00
Catch Basins - Adjust & Set to Grade	One hundred and fifty dollars and no cents per each	150.00
Manholes - Adjust & Set to Grade	One hundred and twenty-five dollars and no cents per each	125.00
Water Valves - Adjust & Set to Grade	Fifty dollars and no cents per each	50.00
Standard C.B.'s (Complete In Place)	One thousand three hundred dollars and no cents per each	1,300.00
Curb Removal	Two dollars and no cents per lineal foot	2.00
Curb (Type I-B)	Ten dollars and no cents per lineal foot	10.00
Sub Total	Three hundred and sixty-nine thousand	

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5951-82, the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally ***See Liquidated Damages Provision

and in all respects completed on or before *** 19 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of \$25.00 for each and every day after said ***

19 until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even *prima facie* evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 27

day of October, 1982

ATTEST:

James J. Casper
Corporate Secretary

DAILEY ASPHALT PRODUCTS COMPANY, INC.

BY: H. W. Dailey, Jr.

ITS: Pres.

Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

McCloskey
Robert Anderson, M.D.

ATTEST:

Samuel Kennedy
Secretary and Clerk

Its Board of Public Works and Mayor.

R. J. Snover
ASSOCIATE CITY ATTORNEY

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

----- DAILEY ASPHALT PRODUCTS COMPANY, INC. -----

(Name of Contractor)

----- 1122 THOMAS ROAD, FORT WAYNE, INDIANA -----

(Address)

a Corporation, hereinafter called Principal,
(Corporation, Partnership or Individual)

and St. Paul Fire and Marine Insurance Company, a Minnesota Corporation
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, an Indiana Municipal Corporation in the penal sum of FIVE HUNDRED AND FIFTY-ONE THOUSAND, SIX HUNDRED AND FIFTY-SEVEN DOLLARS AND NINETY-FIVE CENTS -----
for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 27 day of October, 1982, for the construction of:

Improvement Resolution No. 5951-82

To improve the 1st Councilmanic District - 1982 Asphalt Resurfacing (Bond Issue).

See attached Improvement Resolution for list of streets and limits involved.

at a cost of FIVE HUNDRED AND FIFTY-ONE THOUSAND, SIX HUNDRED AND FIFTY-SEVEN DOLLARS AND NINETY-FIVE CENTS -----

(\$ 551,657.95-----), all according to Fort Wayne Street Engineering Department plans and specifications.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in three (number) counter-parts, each one of which shall be deemed an original, this 31 day of October, 1982.

(SEAL)

ATTEST:

Jerome J. Cooper
(Principal) Secretary

DAILEY ASPHALT PRODUCTS COMPANY, INC.

Principal

BY EW Dailey Jr
Pres
(Title)

(Address)

Witness as to Principal

(Address)

St. Paul Fire and Marine Insurance

Surety

BY Donald Robertson
Attorney-in-Fact
(Authorized Agent)

Yaste, Zent & Rye, Inc.

P. O. Box 1367

(Address)

Fort Wayne, Indiana 46801

Leonard Oberly
Witness as to Surety

Yaste, Zent & Rye, Inc.
(Address)

P. O. Box 1367

Fort Wayne, Indiana 46801

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we DAILEY ASPHALT PRODUCTS COMPANY, INC. as Principal, and the St. Paul Fire and Marine Insurance Company, a corporation organized under the laws of the State of Minnesota, and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of FIVE HUNDRED AND FIFTY-ONE THOUSAND, SIX HUNDRED AND FIFTY-SEVEN DOLLARS AND NINETY-FIVE CENTS -----
(\$ 551,657.95-----), for the payment whereof well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The condition of the above obligation is such that

WHEREAS, the Principal did on the 27 day of October, 1982, enter into a contract with the City of Fort Wayne ~~XXXXXXXXXXXX~~

Improvement Resolution No. 5951-82

To improve the 1st Councilmanic District - 1982 Asphalt Resurfacing (Bond Issue).

See attached Improvement Resolution for list of streets and limits involved.

at a cost of \$ 551,657.95-----, according to certain plans and specifications prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement provides:

1. That said improvement shall be completed according to said plans and specifications, and contractor shall warrant and guarantee all work, material, and conditions of the improvement for a period of three (3) years from the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice.

WHEREAS, said Surety, for value received, hereby stipulates and agrees, that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

DAILEY ASPHALT PRODUCTS COMPANY, INC.

(Contractor)

BY: H.W. Dailey Jr.

ITS: Pres.

ATTEST:

Herminie J. Cooper
City Treasurer
Title

St. Paul Fire & Marine-Insurance Co.

Surety

*BY: Donald D. Johnson
Authorized Agent
(Attorney-in-Fact)

*If signed by an agent, power of attorney must be attached

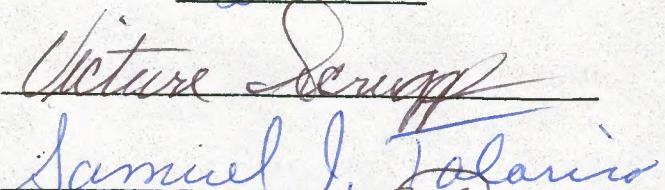
BILL NO. S-82-12-26

REPORT OF THE COMMITTEE ON PUBLIC WORKS

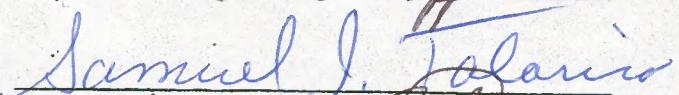
WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS REFERRED AN
ORDINANCE approving Street Improvement Resolution No. 5951-82,
1982 Asphalt Resurfacing, First Councilmanic District, with Dailey
Asphalt Products Co., Inc., in connection with the Board of Public
Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

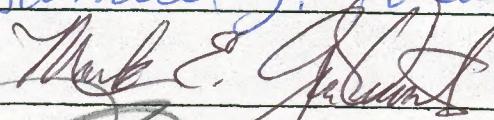
VICTURE L. SCRUGGS, CHAIRMAN



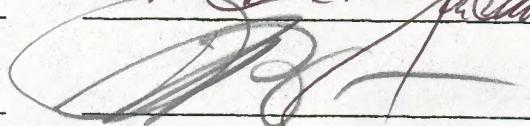
SAMUEL J. TALARICO, VICE CHAIRMAN



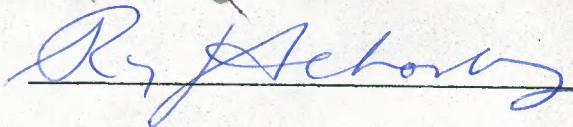
MARK E. GIAQUINTA



PAUL M. BURNS



ROY J. SCHOMBURG



1-11-83
CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

TITLE OF ORDINANCE Street Improvement Res. #5951-82, Asphalt Resurfacing in 1st Distr

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

182-12-26

SYNOPSIS OF ORDINANCE Resurface and restore pavement as designated on the following
streets: 1) Wabash Ave. 2) Holly Ave. 3) Felician St. 4) Raymond Ave.

5) New Haven Ave. 6) Tecumseh St. 7) Delta Blvd. 8) Creighton Ave. 9) Forest Valley

10) Grandeur Drive 11) Monarch Drive 12) Countess Dr. 13) Warren Street

14) Pennsylvania St. 15) McDonald St. 16) Pittsburg St. 17) Winch St.

Contract awarded to low bidder Dailey Asphalt Products Company Inc:

Prior approval obtained September 7, 1982.

EFFECT OF PASSAGE Improvement of 1st District.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$551,657.95

ASSIGNED TO COMMITTEE